

MONTANA DEPARTMENT OF AGRICULTURE

The Department of Agriculture was established to encourage and promote the interests of agricultural and allied industries in Montana. It collects and publishes agricultural production and marketing statistics relating to agricultural products; assists, encourages and promotes the organization of farmers' institutes, agricultural societies, fairs, and other exhibitions of agriculture; adopts standards for grade and other classifications of farm products; coordinates in devising and maintaining economical and efficient marketing distribution systems; gathers and distributes marketing information concerning supply, demand, price, and movement of farm products; regulates production and marketing of food and fiber products; and registers pesticides and fertilizers and enforces laws pertaining to them.

The activity mentioned last, pesticide and fertilizer regulation, is considered to be a "regulatory" program. This program is housed in the Agricultural Sciences Division, noted in bold in the table below.

<u>Bureau/Division</u>	<u>Budget</u>		<u>Staff (FTEs)</u>	
	<u>FY 96</u>	<u>% of Total</u>	<u>FY 96</u>	<u>% of Total</u>
Central Management	\$546,000	6.4%	11.5	10.6%
Agricultural Sciences	4,421,000	51.7	52.5	48.4
Agricultural Development	3,589,000	41.9	44.5	41.0
TOTAL	\$8,556,000	100.0%	108.5	100.0%

source: LFA, 1995.

AGRICULTURAL SCIENCES DIVISION

This division is one of three currently organized in the Montana Department of Agriculture. The others are the Central Management Division, which manages administrative and legal matters, and the Agricultural Development Division, which has responsibilities for commodity promotion, analysis and inspection, agricultural market development and financing, and others. Programs within these other two divisions were not identified by the agency as being relevant to the Compliance and Enforcement Study.

The Agricultural Sciences Division administers, manages, coordinates, and evaluates the major activities of: 1) pesticide and pest management, 2) analytical laboratory services, 3) noxious weed management, 4) agricultural chemical ground water management, and 5) vertebrate pest management. This division administers the Montana Pesticides Act, Agricultural Chemical Ground Water Protection Act, Crop Insect Detection Act, Commercial Feed Act, Commercial Fertilizer Act, Vertebrate Pest Management Act, Noxious Weed Trust Fund Act, and the Weed Assistance Act. The division administers agricultural programs relating to the production, manufacturing, and marketing of commodities exported from or distributed in the state. The Montana Department of Agriculture has identified two of its programs, the Pesticides Program and the Agricultural Chemical Ground Water Protection Program as being subject to review under the criteria established by the EQC for the compliance and enforcement study. FY 96 budget, staffing, and funding source information for all programs in the Agricultural Sciences Division is provided on the following page.

<u>FY 96 Budget</u>		<u>FTE</u>	<u>FY 96 Funding Sources</u>	
Personal Services	\$1,604,400	52.5	General Fund	\$ 106,890
Operating Expenses	\$1,012,100		State/Other Special	\$3,758,700
Equipment	\$ 216,900		Federal Special	\$ 555,054
Grants	\$1,587,300		Proprietary	0.00
Benefits and Claims	<u>0.00</u>	<u>—</u>		<u>—</u>
TOTAL	\$4,420,700	52.5		\$4,420,668

LEPO staff did not attempt comparisons between FY 90 and FY 96 figures. During the time interval, a significant reorganization of programs between divisions and a consolidation of divisions made comparisons difficult.

Legislative History

Events important to the pesticide and ground water compliance/enforcement elements of the Agricultural Sciences Division are summarized below.

- 1947 Montana Insecticide, Fungicide and Rodenticide act (Pesticide Product Registration act).
- 1971 Montana Pesticides act, enacted.
Major amendments to Montana Pesticides Act; permitted licensing of applicators and dealers, other significant changes.
- 1983 State Pesticide Management Account established..fees for program support.
- 1989 Montana Agricultural Chemical Ground Water Protection Act enacted.
- 1993 Pesticide Act amendments established temporary waste pesticide and container recycling and disposal and amended penalties.

Pesticides Program

Montana's constitution requires the Montana Department of Agriculture (MDA) to protect, enhance and develop all agriculture in the state. The constitution also provides for the maintenance and improvement of a clean and healthy environment for present and future generations.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Pesticides Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. XII, Sec. 1** provides for a Department of Agriculture and laws and appropriations to protect, enhance, and develop all agriculture. Sec. 2 provides that special levies may be made on livestock and on agricultural commodities for disease control and indemnification...inspection, protection, research and promotion. Revenue derived can be used only for the specified purposes. Art. IX, Sec. 1 provides for the maintenance and improvement of a clean and healthful environment for present and future generations.
- **Montana Pesticides Act** (MCA 80-8-101, et. seq.) provides for the use and control of necessary pesticides.

Supplemental and/or related state authorities:

- **Montana Agricultural Chemical Ground Water Protection Act** (MCA 80-15-101 et. seq.)
- **The Montana Environmental Policy Act** (MCA 75-1-101, et. seq.)
- **Water Quality Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)
- **Montana Hazardous Waste Act** (MCA 75-10-401, et. seq.)

Related federal authorities:

- **Federal Insecticide, Fungicide, Rodenticide Act (FIFRA)**
- **National Environmental Policy Act (NEPA)**
- **Federal Endangered Species Act (ESA)**

Administrative rules:

- ARM 4.10.101-1008, ARM 4.10.1201-1208, ARM 4.10.1401-1808.

Specific enforcement authority:

- MCA 80-8-104, MCA 80-8-105, MCA 80-8-110, MCA 80-8-211, MCA 80-8-302, 303, 304, 305, and specifically MCA 80-8-302 through 306.
- ARM 4.10.1001-1006
- FIFRA (allows states to be granted primary responsibility for enforcement)

Primacy and jurisdictional agreements

- a) primacy from EPA for Pesticides Act
- b) Memorandum of Understandings with
 1. Montana Dept Env Quality
 2. U.S. Dept of Defense
 3. U.S. Dept of Agriculture

2. Program Goals. Based on the above-referenced guidance, the Pesticides Program has identified the following program goals:

1. Ensure compliance with the Montana Pesticides Act.
2. Ensure that pesticides are sold and used by trained, qualified, licensed/certified persons.
3. Continue to develop programs on worker protection, endangered species, and the disposal of pesticides and pesticide containers.
4. Provide training and assistance to farmers, ranchers, and the general public on methods for controlling insects, weeds, and rodents.
5. Implement integrated pest management in Montana schools to minimize the effects on human health, the environment and nontarget organisms.
6. Develop cooperative agreements with Montana Indian tribes.
7. Provide reliable, dependable, economical, and timely analytical data.

3. Program Activities. In general, the Pesticides Program implements the requirements of the Montana Pesticides Act and administers provisions of the Federal Insecticide, Fungicide and

Rodenticide Act (FIFRA) in the state. All pesticides, federally approved for sale, must be registered with the Montana Department of Agriculture prior to their use in Montana. Applicators of pesticides which are designated by the federal Environmental Protection Agency (EPA) and the MDA as "restricted pesticides" instead of "general pesticides", must be licensed as certified applicators by the program. Commercial and government applicators of pesticides must be licensed by the state program. Pesticide dealers (as defined) must also be licensed by the state. The Pesticides Program provides training, technical advice and certification for pesticide use and application. A waste pesticide and used pesticide container collection, cleaning and recycling program is being administered by the department temporarily until 1999. These activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>FY 96 Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of proj./yr</u>
Administration N.A.	\$ 68,098	1.61		N.A.	N.A.	
Field Services Bureau	273,873	6.34	5.2	Routine Inspections	N.A.	690
				Investigations	N.A.	57
				Samples	N.A.	190
Technical Services Bureau	637,761	5.95		Pesticide Registrations	N.A.	4,915
				Pesticide Licenses	N.A.	4,560
				Pesticide Education	N.A.	1,500
Laboratory Bureau	<u>292,227</u>	5.21		Pesticide Analyses	N.A.	1,772
				Analytical	N.A.	2
				Method-Development		
TOTALS	\$1,271,999	19.11				

* Does not include support received from Central Management Division for personnel and legal services

Of the 19.11 FTEs in the Pesticides Program, 6.34 FTEs are assigned to program field enforcement and compliance activities. The department has field offices in Billings, Bozeman, Glasgow, Great Falls, and Missoula. Support offices are in Helena and the analytical laboratory is in Bozeman. This assignment of FTEs and functional activities is shown in the following two tables.

<u>Office Locations</u>	<u>FY 96 FTEs</u>
Helena	10.56
Bozeman (Field Services Bureau)	0.66
(Laboratory Bureau)	5.21
Billings	0.34
Glasgow	1.00
Missoula	0.34
Great Falls	1.00
Total	19.11

<u>Functional activities</u>	<u>Approximate Annual Workload</u>
Pesticide dealer licensing	475
Pesticide applicator licensing (commercial, government, and noncommercial)	2,967
Farm applicator permitting	2,167

<u>Functional activities (cont.)</u>	<u>Approximate Annual Workload</u>
Inspections	630
Compliance Assistance	40
Complaint investigations	57
Sample Collection	190
Pesticide Registrations	5904
Emergency and Special Local Need Registrations	15
Training Manuals Revised or Written	2
Applicators Trained/Courses	1500/60
Pesticide Waste Collection	15,000 lbs
Surveys, Training and Demonstrations	2,000
Pesticide Analyses	1,772
Pesticide Analytical Method Development	2

<u>Pesticides Program Revenue</u>	<u>Budget</u>			
	<u>FY 96</u>	<u>FY 97</u>	<u>Total</u>	<u>% of Total</u>
FTE	19.11	19.11	19.11	
	\$ 15,917	\$ 16,138	\$ 32,055	1.2
General Fund	\$ 773,920	\$ 769,346	\$1,543,266	59.5
	\$ 5,000	\$ 5,000	\$ 10,000	0.4
Pesticide Account	\$ 9,402	\$ 9,402	\$ 18,804	0.7
Pesticide manuals	\$ 467,720	\$ 522,986	\$ 990,706	38.2
Pesticide training EPA				
Agreements	\$1,271,959	\$1,322,872	\$2,594,831	100%
TOTAL				

Fees and Charges. The Pesticides Program revenues from fees and charges are described below. The amount of most fees are set in statute. The only fees not set in statute are those for pesticide operators, the temporary waste pesticide collection/recycling project (partially), and the training fees. The earmarked pesticide management account established in Section 17-2-102, MCA is the source of 59.5% of the program budget for the biennium and derives its revenue from the following sources.

<u>Type</u>	<u>Amount</u>	<u>FY 95 Revenues Total</u>	<u>Allowed Uses</u>
Pesticide registration fees	\$70 annually	\$403,660	administering the Act only
STIP units (state interest)		\$13,458	"
Government dealer license	\$50 ann	\$1,975	"
Government applicator	\$50 ann	\$11,143	"
Pvte applicator permit (farms)	\$35 @ 5yrs*	\$21,397	*see below
Pesticide dealer license	\$45 ann	\$21,120	administering the Act only
Pesticide operator license	\$25 ann	\$7,555	"
Pesticide applicator license	\$45 ann	\$49,445	"
Pesticide waste fees	\$2 per lb.	\$76,230	waste pesticide prog. only
Pesticide recycling fees	\$30 ann	\$35,367	pesticide container prog. only
* MSU private applicator fees	\$5 per app.	\$6,250	to develop training materials
* Extn Serv Co training fee	\$15 per app.	\$18,765	to conduct training
TOTAL	\$666,366		

* fees from this licensing fee are earmarked for the MSU Extension Service for training materials and to county extension offices for farm applicator training. Of the \$35 fee; \$15 goes to the MDA, \$15 to the county extension services, and \$5 goes to MSU.

Noncompliance Penalties

FY 1995

Noncompliance Penalties Proposed Average	\$ 250.00	
Total Proposed Penalties	\$4,950.00	
Average Final Penalty	\$ 190.00	
Total Final Penalties Collected (FY 95)	\$3,800.00	to General Fund

4. Regulated Communities. Consistent with the activities noted above, the MDA Pesticides Program is involved with:

- Pesticide manufacturers, formulators, and distributors to register approximately 5,904 pesticides annually.
- Licensing of approximately 1,554 commercial and governmental pesticide applicators annually.
- Licensing of approximately 1,413 pesticide operators annually.
- Licensing approximately 475 pesticide dealers annually.
- Permitting approximately one-fourth of the 8,667 private farm and ranch owner pesticide applicators per year.
- Users of general pesticides in urban and suburban settings and farms and ranches not required to be licensed.

The regulated community is usually identified through the licensing, training, and permitting programs, dealer sales records, and citizen reports. Key regulated communities are as follows:

Commercial and governmental pesticide applicators and operators. Testing by the department is required for licensing of commercial and governmental pesticide dealers and applicators. Training is optional but, once tested and licensed, these individuals must obtain 12 credit hours of training over a 4 year period to remain qualified. An 80% or higher score on the examination results in an applicator being "certified" and therefore qualified and licensed to apply and purchase the more hazardous "restricted use" category of pesticides.

Private pesticide applicators and operators (farmers and ranchers). The MSU Cooperative Extension Service and the County extension services provide initial training and testing for private applicators (farmers and ranchers). These individuals are only required to obtain a permit if they wish to apply "restricted use" pesticides. The permit is good for 5 years but requires 6 credit hours of training to remain qualified over the period.

There are somewhat different training regimens and examinations for different categories of pesticide applicators. The MDA issues 18 different categories of license; i.e. aquatic pest control, ornamental and turf pest control, agricultural pest control, and others.

Pesticide manufacturers and formulators. Businesses that repackage or produce (manufacture) pesticides can be identified because they are required by federal laws to register with the EPA as a pesticide producing establishment. The identity of registered pesticide production establishments is available from the EPA.

Pesticide dealers. Pesticide dealers are licensed by the MDA. Dealers who sell pesticides used for home, yard, garden, and general home use in small containers (retail pesticides) are not required to be licensed.

5. Philosophical Approach to Compliance. The Pesticides Program relies heavily on education and educational requirements to assure that dealers and applicators of pesticides are qualified. The MDA relies on educational efforts by the MSU Cooperative Extension Service and the County extension service networks to educate farm applicators. The large universe of regulated individuals and limited MDA staff requires prioritization of compliance and enforcement efforts.

High priority activities are conducting inspections of newly licensed pesticide dealers and commercial and governmental applicators within the first year of licensure; investigation of all reports of pesticide misuse, damage from pesticides, improper practices and violations of law; and investigations of off target pesticide drift. Individuals or companies handling large quantities of pesticides or which have contact with the public during sales have a higher regulatory priority for the department. High priority regulatory targets include routine inspections of commercial pesticide applicators, government pesticide applicators, dealers, manufacturers, and formulators of pesticides.

Low priority efforts include inspections of the 8,667 (1995 figures) permitted farm and ranch applicators who use restricted pesticides and the unknown number of users of general pesticides for which licensing and training is not required. However, any reports of noncompliance among these persons are priorities for investigating and correcting.

6. Compliance Tools Available and Used. A variety of training manuals have been produced and are available at nominal charge to provide education on pesticide handling, use, application, and disposal. A February 1996 *Compliance Assistance Inspection Policy and Procedure* document has been produced which attempts to obtain voluntary compliance with program requirements for new dealers and applicators through an inspection/amnesty/and training process. Key tools for obtaining compliance identified by the agency are routine inspections, investigations in response to complaints, sampling, and compliance assistance.

When enforcement action is deemed necessary, notices of violation (NOV's) are the most commonly used compliance enforcement efforts. They are typically written for what the agency considers to be minor first-time offenses.

Types of enforcement responses and penalty amounts are established by statute, and statute requires that, prior to issuing penalties, the department consider the gravity of the violation, degree of harm, degree of care, and effect on a person's ability to stay in business. The program has very specific rules at 4.10.1005 ARM which detail the administrative civil penalties to be applied. Also, ARM 4.10.1006 through 1008, ARM provide very specific program guidance in determining gravity of violation and degree of harm.

The menu of tools used by the Pesticides Program to achieve compliance is shown on the following pages.

7. Incentives for Compliance. According to program staff, a variety of incentives exist. Effectiveness varies depending upon the incentive and among different members of the regulated community. Program staff also suggested that a good view of incentives could be obtained from the regulated community.

Agency-Generated. Statute and Rules: The mere presence of laws prompts compliance. A number of factors influence the level of this compliance including how the laws and rules are viewed, the segment of the regulated community, and others. For the most part, and the agency believes that most members of the regulated community would agree, program staff state that pesticide laws are not inordinately complex, are consistent with federal and other state laws, and are not extremely difficult to comply with. Most large businesses such as pesticide manufacturers, large pesticide dealers, and commercial pesticide applicators probably try to comply with laws and see some incentive in terms of being good stewards and maintaining good records of compliance. Smaller operations, individuals, and certain

culpable persons are probably less likely to comply merely because of the presence of a law. They may not be fully aware of the requirements, or have difficulty in the expense of meeting requirements or understanding the law.

Regulatory Presence: The possibility of being inspected or being investigated as the subject of a complaint is a powerful incentive for compliance. This is enhanced in the Pesticides Program by the field offices which provide a local, readily accessible presence and by experienced staff who are able to identify violations, know how to obtain evidence, and who take an objective, professional approach to their duties. These factors provide a strong incentive among commercial, government, and noncommercial applicators and among licensed pesticide dealers because they are inspected approximately every four years. The affect of this incentive is less among permitted farm applicators, unlicensed pesticide users, and pesticide retailers (home lawn and garden sales) who, because of the sheer numbers and limited division resources, are not inspected routinely.

Penalties: Pesticide law provides a full range of penalties ranging from written warnings to license revocation or criminal sanctions. Many persons will comply because they want to keep a "clean record" and are concerned about the blemish associated with a violation and subsequent enforcement action no matter how severe. The possibility of a civil penalty is a financial incentive particularly among small businesses, farmers, and private persons to whom the civil penalty amounts authorized by statute can be substantial.

Industry-Generated Incentives: Industry organizations provide a positive incentive for compliance when they encourage and support compliance with laws, when there is a cooperative approach between state regulatory agencies and these organizations in developing and implementing laws, and where the membership can see the positive relationship. Organizations that promote compliance in Montana include the Montana Agricultural Business Association, Association of Montana Aerial Applicators, Association of Montana Turf and Ornamental Professionals, and Montana Aviation Trades Association.

Education: While education may not, in a true sense, be an incentive to comply with the law, it is a way to make full use of other incentives. For example, education is an important way to inform people about the existence of the pesticide law, its details, and reasons for regulating pesticides. The individual will be more likely to comply once informed about the presence of the law and the penalties for noncompliance. Education also gives the department an opportunity to convince persons to comply with pesticide laws by discussing needs for the law and the consequences of noncompliance including the detrimental effects from illegally used pesticides.

It should be pointed out that compliance among some culpable individuals is difficult no matter what the incentive. The department has had experiences with individuals who did not comply with the law for various reasons, whether because of political views or because the incentives were not there.

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Education\Information\Technical Assistance: On-site Technical Assistance Technical/Training Seminars Compliance Assistance Inspection and Training Retail pesticide sales-education program	<p>Generally: When the MDA deems it necessary to inform dealers and persons applying pesticides in proper methods of formulating, applying, storing, disposing, handling, and transporting pesticides.</p> <p>*Private Applicator Training; *Commercial Applicator Training</p> <p>Provide first time inspection and compliance assistance to new dealers and applicators at their request with opportunity for violation amnesty granted for less than egregious violations (repeat violations, those resulting in serious environmental harm or injury). Compliance assistance also includes formal training (classroom or one-on-one) and technical assistance.</p> <p>Subject to funds available, the MDA and MSU Extension service to establish program for general public and retailers on pests, pesticides and alternative control methods.</p>	MDA, MSU Ext. Service, County Ext. services, field staff others field staff; Field Serv. Bureau	2000 20 PAT* programs 60 CAT* programs 63 Brochures Video
Comprehensive Planning\Withdrawals:	MCA Section 80-8-105(3) authorizes the agency to promulgate rules, emergency or otherwise, to restrict the use of a pesticide geographically, temporally, etc. to prevent damage to agriculture or the environment.	Director, Div.. Admin.	0.00

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Permits\Certifications\Bonds: Registration of pesticides	When any EPA registered or approved pesticide is sold, distributed, or transported within Montana and upon receipt of annual application, fees, and complete copy of the pesticide label.	staff	5,904
Licensing;	Upon application, passage of exam, payment of annual or multi-annual fee, maintenance of training credits.		
1) Pesticide applicators	1) applicators license: required for any person applying pesticides commercially for another, and required for government agents applying pesticides for a government agency.	staff	1) 1,554
2) Pesticide operators	2) operators license: required for any person operating pesticide equipment in the employ of a licensed commercial applicator and for employees operating pesticide equipment for a government agency licensed as an applicator.	staff	2) 1,413
3) Permitting of farm applicators.	3) farm applicator special use permit required to purchase and use a "restricted use" pesticide. Permit good for 5 years.	staff	3) 1,653
Licensing of Pesticide Dealers	Upon application, passage of exam, payment of annual license fee, maintenance of training credits. "Dealer" sells, wholesales, barbers, etc. pesticides in Mont. but the term dealer here does not include a person who sells pesticides used for homes, lawns, and gardens.	staff	475
Bonds	not authorized		
Financial Responsibility	Required by agency rules for commercial pesticide applicators; Required annually and can be increased depending on applicator's history of compliance. minimum is \$1500\year for aerial applicators; \$500 for others.	staff	1,554

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Monitoring/Inspections: Compliance Inspections: - Pesticide Producers (Manufacturers) -Dealers and applicators; Commercial, noncommercial and government) -Permitted Farm Applicators and Unlicensed Pesticide Users and Retailers Pesticide product sampling & analysis -Residue Sampling and Analyses	Upon reasonable cause, with consent of inhabitant or owner, or following issuance of a warrant. Routine inspections 3-4 year intervals, investigations on receipt of complaint.	Staff, Inspectors	630 total
	Routine inspection the first year of licensure and routinely every 3-4 years thereafter; or upon receipt of complaint of damage or violation.	Staff, Inspectors	17
	Routine inspection the first year of licensure and routinely every 3-4 years thereafter; or upon receipt of complaint of damage or violation.	Staff, Inspectors	561
	Upon receipt of complaint of damage or violation. Limited number of routine inspections (30 in FY 96) of permitted farm applicators; no routine inspections of unlicensed pesticide users or retailers.	Staff, Inspectors	52
	Authorized with a warrant or with consent of the inhabitant or owner to have access to pesticides, devices, or records. Routine samples confirm that pesticides meet label claims. Product samples/Product analyses	Inspectors	22
		Laboratory	45
	Vegetation , soil, water, and other media for residue analyses to obtain documentation of pesticide damage and evidence for investigation. Authorization extends to permission granted by inhabitant or owner of property or with issuance of a warrant.	Staff, Inspectors	168
		Laboratory	1,097

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Administrative Notices\Orders: Notice of Violations; Notice of non-compliance..NONC or NOV Sec. 80-8-306(3)	Department is authorized to issue written warnings or orders for minor violations when this is in the public interest. Notices of noncompliance are standardized forms that field staff use for issuing written warnings. 3-13-95 Draft Policy to issue when: Bureau chief approves in cases of multiple or repeat violations. Pesticide misuse involving general pesticides only (not restricted) and no harm. Incomplete pesticide application or dealer records. License violations with mitigating circumstances. Misuse of retail pesticides with only minor harm to property, vegetation, etc. Label directions inconsistent with recommendations and no harm done. Violations of administrative rules. Faulty equipment or storage facilities.	Field staff and Supvsr., Bureau Chief	31
Compliance orders\ Administrative order Sec. 80-8-305	Upon violation of the law; also to require cleanup of pesticides purposely and improperly dumped, spilled, used or misused.	Div.. Admin., Director	1

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Administrative Penalties\Sanctions: Administrative civil penalty up to \$2500/offense except for permitted farm applicators which can receive a maximum of \$500 for the 1st offense Sec. 80-8-306(5)	For major or serious violations as defined in 80-8-306 5(e) May not be assessed without notice, and prior opportunity for a hearing and appeal under Montana Administrative Procedures Act.	Bureau Chief, Div Admin., Director	13
Embargo of pesticide products Sec. 80-8-303	Upon probable cause of violation of labeling, registration, adulteration, mis-coloring requirements.	inspectors, supervisors	1
License\Permit restrictions; - Deny Registration of Pesticide	When information required to be submitted for registration is lacking, for failure to obtain an EPA registration number, or if label claims are not supported by test data.	Director, Div. Admin.	0
- Restriction of Sale or Use	When necessary to prevent damage to agriculture or the environment. See MCA Section 80-8-105 (3) discussion above under "Comprehensive Planning\Withdrawals.	Director, Div. Admin. Director	0
- Suspend or Cancel	If pesticide is suspended or canceled by a federal agency or when information is provided that indicates adverse affects of product.	staff	0
- Dealers License refusal	Person is not qualified to sell pesticides		0
- License or permit Revocation or Modification	Person has committed any of the violations set forth in MCA 80-8-211(1)(a) through(l) Agency may revoke, deny or modify: for lack of qualification in pesticide use and violations of the law, rules or lawful orders of the department. Department actions are subject to appeal.	Director, Div. Adm.	0
	Department decisions relating to issuing or revoking licenses or permits may be		0

STATE COMPLIANCE AND ENFORCEMENT TOOLS -- PESTICIDES PROGRAM			
Tools Authorized	"Trigger" (When Used)	Authority to Complete	Times Used (95)
Administrative Penalties\Sanctions cont'd: Opportunity for Appeal	Department decisions relating to issuing or revoking licenses or permits may be appealed according to provisions of the Montana Administrative Procedures Act.		0.00
Civil Judicial Actions: Civil Penalties: \$25,000\offense Sec. 80-8-306(5)(c)(I) Injunctions Sec. 80-8-306(2)	For major violations as defined above which also result in significant harm to humans, commodities, livestock or the environment. To restrain a violation or a continuing violation of law or rule.	Div. Admin., Director, District Court District Court	0.00
Criminal Judicial Actions: Misdemeanor fines \$100-\$1500 Sec. 80-8-306(1) Felony Penalties up to \$50,000 and\or 10 years imprisonment	For violations of law or rule or preventing or attempting to prevent Dept. from performing its duty under the law. When, in addition to the conditions and imposition of the civil penalty above, the violation was willfully committed.	County Attorney Div. Admin., Director. District Court	0.00

notes: The MDA Pesticides Program receives assistance in the legal resolution of violations from the single attorney assigned to the MDA.

8. History of Compliance. Over the fiscal years of FY 92, FY 93 and FY 94, the MDA Pesticides Program investigated (FY 92 - 120, FY 93 - 95, FY 94 - 57) a total of 272 possible violations discovered by inspections, tips and complaints.

During this time the MDA issued 32 significant violations such as civil penalties and 68 nonsignificant violations such as notices of violation. The other 172 violations investigated, found no violation or insufficient evidence to support an enforcement action. In many of these situations, the MDA sends an informative type letter.

The MDA staff conducts comprehensive inspections and investigations. Therefore, one inspection or investigation can result in multiple possible violations such as misuse, operations, records or licensing.

The following tables show a breakdown of the enforcement actions taken, significant and nonsignificant, and the number of inspections conducted that were in compliance.

FY 92 Inspections/ Investigation	Commercial/ Government/Noncom- mercial Applicators	Dealer	Permitted Private Applicators	Unlicensed Persons & Persons not Required to be Licensed
Significant Violations	13	3	0	0
Other Non- Compliance	20	5	2	2
In Compliance	545	276	10	64
FY 93 Inspections/ Investigation	Commercial/ Government/ Noncommercial Applicators	Dealer	Permitted Private Applicators	Unlicensed Persons & Persons not Required to be Licensed
Significant Violations	6	5	1	0
Other Non- Compliance	17	4	2	2
In Compliance	527	197	8	59
FY 94 Inspections/ Investigations	Commercial/ Government/ Noncommercial Applicators	Dealer	Permitted Private Applicators	Unlicensed Persons & Persons not Required to be Licensed
Significant Violations	5	3	0	0
Other Non- Compliance	6	6	1	0
In Compliance	388	227	4	63

The number of investigations vary from year to year because agriculture and pesticide use varies with weather conditions, pest outbreaks, rainfall and crop types or prices. For example, if there is an outbreak of grasshoppers, the amount of insecticide applied will increase and as a result there would be

more investigations and complaints. Another example might be a cold wet spring, in which case there might be a decrease in amount of herbicide being applied because the weeds aren't maturing and, as a result there will be fewer investigations or complaints related to herbicide use.

9. "Violations." Serious violations are those violations for which an administrative civil penalty, a judicially imposed civil penalty and/or a judicially imposed felony penalty may be imposed (see "tools" matrix above). Serious violations are defined in Section 80-8-306(5)(e), MCA as one or more of the following:

1. misuse of a pesticide that results in proven exposure or proven harm to humans, livestock, agricultural commodities or the environment.
2. selling restricted pesticides to unauthorized or uncertified persons.
3. use or sale of unregistered pesticides.
4. failure to keep pesticide sales and application records.
5. using or selling pesticides without the required license or permit.
6. noncompliance with pesticide worker protection standards or labeling requirements.
7. noncompliance with pesticide ground water and EPA endangered species standards and labeling.
8. noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements
9. reoccurrence of the identical violation of the law within 2 years of the previous violation.

During the 1995 calendar year, the Pesticides Program issued 32 NOVs. Five were issued to dealers, 26 to commercial/government applicators, and 1 to a permitted farm applicator. There were no repeat violators in that time period.

During 1995, 18 proposed administrative civil penalty notices were issued totaling \$3,950.00, resulting in the resolution of 18 violations and the collection of \$3,250.00 in final civil penalties. No judicial actions were considered or filed.

During 1995 there were no revocation, modification or denial actions taken on licenses.

About 50 investigations were conducted in 1995, down from a more typical 80 per year.

The Calendar Year (CY) 95 list of pending and new Pesticides Program violations is shown below.

The following abbreviations are applicable to the next four tables:

CP - Civil Penalty
M - Being monitored
NOV - Notice of Violation
R - Being reviewed
SBI - Still being investigated

12 - Commercial Applicator
10 - Pesticide Dealer
15 - Governmental Applicator
11 - Permitted Private Applicator
N/A - Not required to have license or unlicensed
CR - Case Review
ER - Enforcement Response Issued

ISSUED in CY 95: SIGNIFICANT VIOLATIONS

Date Insp. or Investigation Initiated	Case Number	Type of License	Description of Violation	Date Action Issued	Enfor. Action Taken	Sig. Vio. Yes or No
09-29-93	93-1267	12	Improper lic.	05-19-95	\$250 CP	Y
09-25-92	92-1321	12	Misuse	05-04-95	\$150 CP	Y
06-23-92	92-1335	12	Misuse	05-04-95	\$200 CP	Y
		12	Improper lic.	05-04-95	\$250 CP	Y
10-05-92	92-1368	12	Misuse	05-04-95	\$100 CP	Y
		12	Improper lic.	05-04-95	\$100 CP	Y
09-28-93	93-1415	12	Improper lic.	04-06-95	\$100 CP	Y
		10	Sale to unlic. indiv.	04-06-95	\$100 CP	Y
04-19-95	95-1721	10	Sale of unreg. pesticide	06-05-95	Refer to EPA	Y
09-21-94	94-1817	10	Repackaging pesticides	06-23-95	Refer to EPA	Y
12-21-94	94-1830	10	Sale to unlic. indiv.	05-08-95	\$250 CP	Y
05-04-95	95-1858	10	Sale to unlic. indiv.	07-12-95	\$250 CP	Y
11-23-92	93-577	10	P.E. Records	05-19-95	Refer to EPA	Y
05-27-93	93-584	12	Improper lic.	05-16-95	\$250 CP	Y
06-28-94	94-659	12	Spilled pest.	05-08-95	\$250 CP	Y
		12	Failure to keep records	05-08-95	\$150 CP	Y
06-29-94	94-660	12	Misuse	05-22-95	\$150 CP	Y
08-19-94	94-664	12	Improper lic.	07-13-95	\$150 CP	Y
09-29-94	94-674	12	Improper lic.	05-18-95	\$150 CP	Y

09-01-92	92-935	12	Misuse	05-26-95	\$250 CP	Y
02-19-93	93-958	10	Sale to unlic. indiv.	07-21-95	\$250 CP	Y

Total Proposed CP's \$3,950.00

Total Final CP's \$3,250

ISSUED in CY 95: NONSIGNIFICANT VIOLATIONS

Date Insp. or Investigation Initiated	Case Number	Type of License	Description of Violation	Date Action Issued	Enfor. Action Taken	Sig. Vio. Yes or No
09-29-93	93-1267	12	Misuse	05-19-95	NOV	N
		12	Records	05-19-95	NOV	N
09-25-92	92-1321	12	Records	05-04-95	NOV	N
06-08-92	92-1345	12	Faulty Oper.	05-04-95	NOV	N
06-24-92	92-1346	12	Misuse	05-04-95	NOV	N
		12	Records	05-04-95	NOV	N
09-28-93	93-1415	12	Records	04-06-95	NOV	N
05-31-94	94-1571	12	Misuse	05-16-95	NOV	N
		12	Records	05-16-95	NOV	N
06-27-94	94-1666	12	Misuse	06-08-95	NOV	N
06-22-94	94-1694	11	Misuse	05-24-95	NOV	N
06-17-94	94-1695	12	Records	05-24-95	NOV	N
03-25-92	92-1827	12	Sale w/o lic.	04-28-95	NOV	N
12-21-94	94-1830	10	Records	05-08-95	NOV	N
04-11-94	94-1982	10	Records	03-15-95	NOV	N
07-12-94	94-2084	12	Records	05-04-95	NOV	N
11-14-94	94-2156	12	Records	05-23-95	NOV	N
05-24-95	95-2310	12	Records	07-28-95	NOV	N
06-25-91	91-38	10	Fed records	05-19-95	NOV	N
05-31-94	94-645	12	Improper lic.	05-22-95	NOV	N
06-28-94	94-659	12	Faulty equip.	05-08-95	NOV	N
		12	Misuse	05-08-95	NOV	N
06-29-94	94-660	12	Records	05-22-95	NOV	N
06-28-94	94-662	15	Misuse	07-31-95	NOV	N
08-19-94	94-664	12	Records	07-13-95	NOV	N
		12	Misuse	07-13-95	NOV	N

09-27-94	94-669	10	Sale Unreg. pesticides	05-22-95	NOV	N
09-29-94	94-674	12	Records	05-18-95	NOV	N
09-01-92	92-935	12	Improper lic.	05-26-95	NOV	N
02-19-93	93-958	10	Records	07-21-95	NOV	N
02-10-93	93-983	12	Misuse	05-19-95	NOV	N
		12	Sale w/o lic.	05-19-95	NOV	N

95 CASES PENDING in CY 95 (Status at Year-end)

Date Insp. or Investigation Initiated	Case Number	Type of License	Description of Violation	Pending ER Issues Case Status	Sig. Vio. Yes or No
06-09-95	95-1305	10	Sale w/o lic.	CR	*
06-23-95	95-1310	12	Pest. residue in soil	CR	*
07-31-95	95-1614	12	Pest. residue in soil	CR	*
08-03-95	95-1615	12	Drift	CR	*
10-03-95	95-1616	12	Drift	SBI	*
05-12-95	95-1683	12	Drift	CR	*
07-18-95	95-1725	12	On site damage	CR	*
04-04-95	95-1839	N/A	Pest. residue in soil	CR	*
05-11-95	95-1859	10	Mislabeled containers	CR	*
05-18-95	95-1869	12	Drift	CR	*
05-23-95	95-1871	10	Sale to unlic. indiv.	CR	*
02-09-95	95-1970	12	On site damage	CR	*
05-30-95	95-2158	12	Unlicensed	CR	*
05-31-95	95-2311	11	Drift	CR	*
06-13-95	95-2314	15	Drift	CR	*
08-09-95	95-2323	12	Misuse	CR	*
07-24-95	95-2324	12	Misuse	CR	*
10-10-95	95-2351	12	Unlicensed	CR	*
01-12-95	95-2393	10	Pesticide contamination	CR	*
09-07-95	95-2496	12	On target damage	CR	*

94 AND OLDER CASES PENDING in CY 95 (Status at Year-end)

Date Insp. or Investigation Initiated	Case Number	Type of License	Description of Violation	Case Status	Sig. Vio. Yes or No
09-23-93	93-876	15	Pest. residue in soil	ER	Y
10-7-91	91-074	12	Unlicensed	ER	Y
04-03-90	90-1991	12	Soil remediation for DDT	ER	Y
02-23-92	92-539	15	Pest. spill	ER	Y
08-17-93	93-1485	12	Misuse/Drift	Contested Case	Y
10-03-94	94-1823	11	Improper container disposal	ER	Y
07-24-94	94-1667	15	Pest. residue in soil	Cleanup approved	Y
12-21-94	94-1968	12	Misuse/damage	CR	Y
12-20-91	92-002	N/A	Pest. spill	ER	N
11-16-92	92-1126	12	Pest. residue in soil	SBI	*
07-13-94	94-1307	N/A	Pest. in G.W.	SBI	*
06-21-94	94-682	N/A	Pest. residue in soil	SBI	*

* Significance not determined prior to final case review and issuance of enforcement response.

Discovery of Violations. Most violations in the Pesticides Program are discovered through inspections, tips and complaints. The MDA records but does not track discovery or who reports a complaint. But review of the enforcement actions issued in CY 95 shows the following:

METHOD BY WHICH VIOLATIONS WERE DISCOVERED IN CY 95

	Tip or Complaint	Routine Inspection	Other Agency Referral
Comm/Gov Applicators	33	7	0
Pesticide Dealers	3	8	1
Permitted Farm Applicators	1	0	0

10. Considerations in Calculating Penalties. The Pesticides Act contains rather specific penalties allowable for violations of the law and it defines major violations in the statute. The Act specifically states that the department is not required to report minor violations of the law for prosecution or to initiate seizure or embargo

proceedings if the department can serve the public interest through issuance of a warning or order. The law also requires the department to consider gravity of the violation, the degree of care taken by the offender, the degree of harm caused and the effect on a person's ability to stay in business when the department is determining the amount of any civil penalty to be assessed in response to a violation.

The Pesticides Program uses a matrix in ARM 4.10.1005 to assess administrative civil penalties for defined major violations. There is no other "penalty formula" for determining judicial misdemeanor, criminal or civil penalties. The matrix provides the MDA with a range of economic penalties for a variety of offenses. The Act provides that these penalties cannot exceed \$2,500 for each offense but that the penalty cannot exceed \$500 for the first offense committed by a permitted farm applicator. The agency then uses the above mentioned gravity criteria as required by law and set forth in rule to arrive at a proposed administrative penalty. The agency intends to amend the civil penalty rules to reflect amendments to the act in 1995.

There are no "per day" violation penalties. The penalty amounts are per violation and are listed in the matrix.

Aside from the administrative penalty matrix in rule, the following factors are considered in establishing each penalty amount.

Gravity of Violations:

- Classification of pesticide (restricted or general use)
- More toxic pesticide involved
- Antidote not available
- Residue levels exceed tolerances or action levels
- Extent of harm to human health, commodities, environment or livestock
- Person's history of compliance
- Ambient air levels exceed standards
- Timeliness in correcting a violation
- Cooperation during an inspection or investigation
- Multiple violations
- Violations have potential to cause exposure or harm
- Timely settlement of damages
- Knowledge of act or rules that were violated

Degree of Care:

- Misuse involving little or no negligence may mitigate a penalty
- Misuse involving negligence may have a neutral affect on a penalty
- Misuse involving gross negligence may enhance a penalty

Affect on a Person's Ability to Stay in Business:

- The department will consider the financial affect on "ability to stay in business" when the charged person submits bonafide financial information. This may consist of copies of tax returns and financial statements, and the person may request a reduction in a penalty or an alternate payment schedule.

The "starting point" for the amount of civil penalty, prior to any adjustments based on penalty mitigators or enhancers, is set at agency discretion. This starting point is consistent from one case to another. This consistency is assured by reviewing past cases and by the experience of staff involved in penalty determination.

11. Resolution of Noncompliances. During the fiscal years of 92, 93, and 94 the MDA issued 32 significant violations such as administrative civil penalties and EPA referrals and 68 nonsignificant violations such as Administrative Notices of Violation. The other 172 violations investigated, found no violation or insufficient evidence to support an enforcement action. In many of these situations, the MDA sends an informative type letter. No judicial actions or license revocation, modification or denial actions were taken during this time.

The MDA staff conducts comprehensive inspections and investigations. Therefore, one inspection or investigation can result in multiple possible violations such as misuse, operations, records or licensing.

The first table below illustrates a breakdown of the violations for pesticide license categories for FY 92, FY 93, and FY 94. The 2nd table below shows resolutions of violations and the number still unresolved for FY 92, FY 93 & FY 94 (see tables in sections 8 & 9 for further break down).

NUMBER OF VIOLATIONS FOR PESTICIDE LICENSE CATEGORIES

Federal Fiscal Year	Commercial/ Government/ Noncommercial Applicator	Dealer	Permitted Farm Applicator	Unlicensed	Total
1992	33	8	3	2	46
1993	23	9	3	2	37
1994	12	9	1	0	22

RESOLUTIONS OF VIOLATIONS

Federal Fiscal Year	Administrative Civil Penalty	Notice of Violation	Orders	EPA Referrals	Unresolved	Total
1992	16	29	0	1	5	51
1993	8	23	2	4	2	39
1994	6	14	0	2	5	27

12. Current Compliance Priorities. The Department of Agriculture identified the following current, long term compliance priorities for the Pesticides Program:

- Conduct educational programs to qualify pesticide applicators and dealers. Priorities for education are pesticide dealers, commercial applicators, government applicators, permitted farm applicators, and certified noncommercial applicators. Lower priorities are pesticide retailers and nonlicensed pesticide users.
- Investigate complaints of pesticide misuse and violations of pesticide laws. High priorities for investigation include situations dealing with harm to human health, agriculture or the environment, restricted use pesticides, licensed pesticide applicators and dealers, large scale pesticide use such as government programs or block spraying, canceled or suspended pesticides, and farm worker protection.
- Assure that pesticides being sold are registered by the EPA and the Montana Department of Agriculture and are labeled as required by law. This is accomplished by routine (neutral) inspections of businesses that sell pesticides. Priorities for inspection are larger businesses that sell nonretail pesticides (larger containers). Lower priorities include pesticide retailers (home, lawn, and garden), dealers of animal health products, and others that sell small volumes or small containers.
- Assure that pesticides are applied according to label directions. This is accomplished by routine (neutral) inspections of pesticide applicators. Priorities for inspection of applicators are those that apply large volumes to property other than their own (commercial, government and certified noncommercial applicators). Permitted farm applicators and unlicensed applicators of general use pesticides are lower priorities for inspecting.

- Conduct pesticide sampling and analyses to investigate the effects of pesticide residues and assure that pesticides being sold meet label claims and are not adulterated.

The Department of Agriculture identified the following short term compliance priorities) over the next 12 months:

- Complete case review and enforcement response for all investigations and violations that occurred in calendar year 1995.
- Enter into a cooperative agreement with the U.S. Environmental Protection Agency for fiscal year 1997 to assure that Montana retains primacy for pesticide enforcement.
- Refine procedures for enforcing farm worker protection standards and incorporate these into the existing enforcement framework.
- Adopt policy as required by 80-8-120, MCA for review of local pesticide ordinances.
- Revise penalty matrix rule to implement amendments that revised penalties and enforcement statutes.
- Conduct compliance assistance and training for sugar beet and cherry growers. These crops are priorities because of the number of farm workers involved in growing and harvesting and the application of pesticides during or near the time that farm workers are employed.
- Update standard operating procedures for enforcement and sampling activities.

13. Compliance Relationships with Other Agencies.

Oversight - Cooperative Agreement with the E.P.A. The MDA enters a yearly cooperative agreement with the Environmental Protection Agency (EPA). For the FY 96-97 biennium, EPA grant funds total \$990,706 or 38.2% of the Pesticides Program budget. This is \$300,000 higher than the usual EPA grant amount due to some additional tasks being undertaken by the state agency this biennium. The agreement includes the agency's commitment to check for compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as the Montana Pesticides Act in Montana. This agreement grants MDA primary responsibility for enforcing pesticide laws in Montana. In the event that a violation is one for which the state has no remedy, such as violations at pesticide formulators or manufacturers, federal facilities or on tribal lands, the MDA refers the violation to the EPA for resolution. The State EPA agreement spells out the obligations of MDA for the biennium including sampling, inspections, enforcement and compliance activities and tracking requirements, technical assistance, outreach and education efforts, and others. The MDA provides quarterly progress reports to the EPA and is subject to mid-year and year-end program reviews.

Partnerships. The MDA Pesticides Program has a Memorandum of Understanding (MOU) with the Department of Environmental Quality (DEQ) which spells out an intent to cooperate in the handling and regulation of waste pesticides and used pesticides containers. Waste pesticides can be considered hazardous wastes by DEQ rules and regulations. Pesticide spills can be remediated as hazardous waste cleanups or as a beneficial use of a manufactured product through a cooperative effort between the MDA and DEQ. Similar situations can arise when addressing leftover pesticide residues in aerial applicator tanks.

The DEQ, Hazardous Waste Program implemented a waste pesticide and used pesticide container collection and recycling demonstration project in the late 1970s similar to that now being undertaken by the MDA Pesticides Program. The MOU sets forth the intent of both agencies to coordinate efforts and personnel in providing educational and regulatory services to the public and the regulated industry.

The MDA Pesticides Program also has MOUs with the Department of Defense and the U.S. Dept of Agriculture, Animal and Plant Health Inspection Service. The agreements are similar; they provide for reciprocity for pesticide applicator certification and allow the MDA to conduct inspections and investigate

pesticide use at federal facilities. The agreements specify that significant violations discovered by the state will be turned over to the EPA for resolution.

There are unwritten cooperative agreements with the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife & Parks in regard to pesticide use and possible impacts on fish and wildlife, migratory waterfowl, and endangered species.

Delegated Authority. The MDA Pesticides Program does not delegate any of its authority to other agencies or units of government. The law provides that a local government may adopt a local pesticide ordinance but the ordinance must be submitted to the MDA for approval and it must be consistent with the authorities of the state Pesticide Act. A local government may petition the MDA to adopt a rule to address a specific local condition. As yet, no local government has submitted proposed local ordinances for approval or petitioned for proposed rule changes.

Montana Agricultural Chemical Ground Water Protection Program

Montana's constitution requires the Montana Department of Agriculture (MDA) to protect, enhance and develop all agriculture in the state. The constitution also provides for the maintenance and improvement of a clean and healthy environment for present and future generations. The MDA is made up of 3 divisions, one of which is the Agricultural Services Division. That division administers the Montana Agricultural Chemical Ground Water Protection Act.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Agricultural Chemical (fertilizers and pesticides) Ground Water Protection Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. XII, Sec. 1** provides for a Department of Agriculture and laws and appropriations to protect, enhance, and develop all agriculture. **Sec. 2** provides that special levies may be made on livestock and on agricultural commodities for disease control and indemnification...inspection, protection, research and promotion. Revenue derived can be used only for the specified purposes. **Art. IX, Sec. 1** provides for the maintenance and improvement of a clean and healthful environment for present and future generations.
- **Montana Agricultural Chemical Ground Water Protection Act** (MCA 80-15-102 et. seq.) provides for proper use and management of agricultural chemicals whereby ground water resources are protected.

Supplemental and/or related state authorities:

- **Montana Pesticides Act** (MCA 80-8-101 et. seq.)
- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)

- **related..Water Quality Act of Montana** (MCA 75-5-101, et. seq.)
- **related..Public Water Supply Act** (MCA 75-6-101, et. seq.)

Related federal authorities:

- **Safe Drinking Water Act** (SDWA) Pub. Law 93-523.
- **Federal Insecticide, Fungicide, and Rodenticide Act** (FIFRA) PL. 92-516.

Agricultural Chemical Ground Water Protection Act rules

- ARM 4.11.101-403, ARM 4.11.601-605, ARM 4.11.901-917, ARM 4.11.1101-1117.

Specific enforcement authority:

- MCA 80-15-104, 80-15-202, and 80-15-401 et.seq.
- ARM 4.11.901-917

Primary and jurisdictional agreements:

- EPA Cooperative Agreement
- MOU with the DEQ Water Quality Division

2. Program Goals. Based upon the above-referenced guidance, the Agricultural Chemical Ground Water Protection Program has identified the following program goals:

1. Protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals (pesticides and fertilizers).
2. Allow for the proper and correct use of agricultural chemicals.
3. Provide for the management of agricultural chemicals to prevent, minimize and mitigate their presence in ground water.
4. Provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.
5. Provide for the proper management of agricultural chemicals by establishing specific management plans to prevent, minimize and mitigate their presence in ground water.

3. Program Activities. In general, the Montana Department of Agriculture (MDA) is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans for Montana. The agricultural chemical ground water General Management Plan (GMP) was submitted to the EPA in 1995. This plan is not enforceable. It provides guidelines, information and sets

the policy groundwork for additional site specific or chemical specific plans which will be enforceable. The MDA, in concert with the Department. of Environmental Quality (DEQ), Water Quality Division (WQD), is authorized to sample ground water for the presence of agricultural chemicals. The MDA is authorized to prepare, implement, adopt and enforce specific management plans (SMPs) for specific management zones and/or for specific agricultural chemicals. These plans are adopted by rule and are enforceable documents. The MDA, working with other agencies and the Montana State University (MSU) Extension Service in particular, has provided considerable training and education to users of agricultural chemicals on ground water science, pollution prevention, and the proper use of agricultural chemicals.

Current enforcement activities are primarily in training staff, developing program procedures, assisting with writing the General Management Plan and preparing to write Specific Management Plans. Enforcement staff have investigated a number of sites where ground water or soils are contaminated with agricultural chemicals. Also, FY 95 pesticide inspection records show that 83 pesticide inspections included a ground water component. This component includes activities such as checking for compliance with ground water protection requirements on labels, sampling ground water, and investigating conditions related to agricultural chemicals in ground water.

About 30% of the ground water program staff are involved in direct field enforcement and compliance activities (investigations, inspections, case review, enforcement response and program management).

These activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retn.</u>	<u>1996 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Administration	\$63,062	1.39			NA	
Field Services Bureau	\$111,440	2.32	5.2	Grndwtr Investig. Routine Inspects. Grndwater Samples. Permanent Grndwtr monitoring sites.	NA NA NA NA	3 83 approx 400 8
Tech. Services Bureau	\$202,073	4.55		Develop Stndrd Operating Procedrs (SOPs) for sampling & monitoring Develop Specific Mgmt Plans (SMPs).	NA NA	20 1-2²
Laboratory	\$193,378	2.29		Grndwater Analyses	NA	approx 600
TOTALS	\$569,953	10.55				

Notes:

1 Does not include support received from Central Management Division for personnel and legal services.

2 Depends upon requirements to write SMP's triggered by requirements in the law or by EPA requirements for SMP's published in the Federal Register.

Fees and Charges. The Agriculture Chemical Ground Water Protection Program (ACGWPP) revenues from fees and charges are described below. Except for the training fees the amounts of the fees are set in statute.

<u>Type</u>	<u>Amount</u>	<u>FY 96 est. Total</u>	<u>Allowed Uses</u>
Pesticide Registration Fees:	\$80	\$477,964	program implementation¹
Fertilizer Registration Fees:	\$10	\$21,772	program implementation
Training fees:	varies	\$3500	various training
Noncompliance Penalties:	varied	0	general fund
TOTAL:		\$503,236	

Notes:

¹ \$15,000 of these pesticide registration funds are earmarked each to the DEQ and to the MSU Extension Service for their assistance in helping MDA implement this Act. The remainder is earmarked for the MDA.

4. Regulated Communities. Consistent with the activities noted above, the ACGWP Program includes three primary regulated communities. These communities are described below.

- Pesticides handlers (applicators, dealers, formulators)
- Fertilizer handlers (applicators, dealers, formulators)
- Persons who use or sell pesticides or fertilizers for which a specific management plan has been adopted.

The ACGWP Act is a relatively new statute and the enforceable provisions have yet to be established. As specific management plans are written, the regulated community will be identified. For example, the EPA has informed states that specific management plans will be required for certain chemicals that have a potential to enter ground water. An example of one of these chemicals is atrazine. If a SMP is adopted for atrazine, it will specify conditions for sale or use which will be enforced and thereby create a specific regulated community of atrazine dealers or users.

The program seeks to prevent pollution of Montana's ground water resources from agricultural chemicals, specifically pesticides and fertilizers. As such, the regulated community is not easily divisible as with other programs. The regulated community is essentially the landowner above the potentially affected aquifer or the person(s) who uses/use agricultural chemicals which could contaminate an aquifer. This can include chemical applicators, chemical dealers or manufacturers through spills and mishandling, and the landowner. Pesticide dealers, fertilizer dealers, and some pesticide applicators are required to be licensed by the MDA and would be identifiable for training and possible regulation. On a voluntary basis, the same is true for landowners who desire training on ground water pollution prevention techniques or best management practices (BMPs).

5. Philosophical Approach to Compliance. The philosophy of the agency, as guided by the Montana constitution and statute, is that agriculture and ground water in the state can be protected and enhanced through the judicious use of pesticides and fertilizers. The department dedicates most of its program effort to prevention of ground water contamination by agricultural chemicals through the use of state MDA, federal EPA, and MSU Extension Service bulletins, brochures, and other training aids.

The Agricultural Chemical Ground Water Protection Program is presently a research and technical assistance program. General statewide ambient ground water monitoring for contamination by agricultural chemicals has been ongoing since 1984, before the law was passed. The Montana ACGWP

Act required the development of the General Management Plan principally as a tool to identify environmentally sensitive areas, soils, and aquifers and to develop best management practices for the use of agricultural chemicals in Montana.

6. Compliance Tools Available and Used. The program's key compliance methodology involves inspections and ground water monitoring. The development of the General Management Plan (GMP) sets the stage for future development of Specific Management Plans (SMPs) which set forth more precise management requirements for the use of agricultural chemicals in a way and in a specific geographic area such that pollution of ground water may be prevented. The ACGWP Program overlaps greatly with the department's pesticides program, and the two are often used in concert. For example, improper storage, use, or application of pesticides that result in ground water contamination in violation of the ACGWP Act can result in penalties under the Pesticides Act as well, including the loss of any applicable license granted under that Act. As yet, the ACGWPP has no formally adopted inspection or compliance/enforcement policy. The program has made a substantial effort at providing some high quality education and information booklets and brochures in cooperation with the MSU Extension Service. Examples include *Protecting Our Water Resources: Environmental Stewardship for Fertilizer Facilities*, *Relative Aquifer Vulnerability Evaluation (RAVE)*, and *Farm *A* Syst: a Farmstead Assessment System*. These documents are technical but readable information designed to teach basic hydrology and help the landowner/chemical user understand the factors and variables which can elevate certain chemical management practices to high risk levels, relative to ground water pollution potentials (fate and transport discussions).

The menu of tools available to the Agriculture Chemical Ground Water Protection Program is shown on the following pages.

7. Incentives for Compliance. According to program staff, a variety of incentives exist or could exist as the program is further developed.

Agency-Generated. Statute and Rules: The mere presence of a law prompts compliance. A number of factors influence the level of this compliance including how the laws and rules are viewed, the segment of the regulated community, and others. Most large businesses such as agricultural chemical manufacturers, large dealers, and commercial pesticide applicators probably try to comply with laws and see some incentive in terms of being good stewards and maintaining good records of compliance. Smaller operations, individuals, and certain culpable persons are probably less likely to comply merely because of the presence of a law. They may not be fully aware of the requirements or have difficulty in the expense of meeting requirements or understanding the law.

Regulatory Presence: The possibility of being investigated as the subject of a complaint is a powerful incentive for compliance. This is enhanced in the ground water program by the field offices which provide a local, readily accessible presence and by experienced staff who are able to identify violations, know how to obtain evidence, and who take an objective, professional approach to their duties.

Inspections: Routine inspections of persons subject to Specific Management Plans will provide additional regulatory presence and incentive for compliance. The details of this are yet to be worked out.

Penalties: The ground water law provides a full range of penalties ranging from written warnings to license revocation or criminal sanctions. Many persons will comply because they want to keep a "clean record" and are concerned about the blemish associated with a violation and subsequent enforcement

action no matter how severe. The possibility of a civil penalty is a financial incentive particularly among small businesses, farmers, and private persons to whom the civil penalty amounts authorized by statute can be substantial.

Industry Incentives: Industry provides a positive incentive for compliance when they encourage and support compliance with laws, when there is a cooperative approach between state regulatory agencies and these organizations in developing and implementing laws, and where the membership can see the positive relationship. Organizations that promote compliance in Montana include the Montana Agricultural Business Association, Association of Montana Aerial Applicators, Association of Montana Turf and Ornamental Professionals, and Montana Aviation Trades Association.

Education: While education may not, in a true sense, be an incentive to comply with the law, it is a way to make full use of other incentives. For example, education is an important way to inform people about the existence of the program, its details, and reasons for regulating agricultural chemicals. The individual will be more likely to comply once informed about the presence of the law and the penalties for noncompliance. Education also gives the department an opportunity to convince persons to comply with the law by discussing needs for the law and the consequences of noncompliance, including the detrimental effects from illegally used chemicals.

It should be pointed out that compliance among some culpable individuals is difficult no matter what the incentive. The department has had experiences with individuals who did not comply with the law for various reasons, whether because of political views or because the incentives were not there.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM (ACGWP)			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/Technical Assistance Programs: Technical Seminars	Required of MDA by law to promote the policies set forth in the General Management Plan (GMP). Training and education services and programs to be conducted in cooperation with the MSU Extension Service. Included as part of pesticide applicator training	MDA staff and MSU	ongoing 80
Comprehensive Planning/withdrawals: -General Management Plan for Ground water Development -Specific Management Plans	Required of MDA by the ACGWP Act to set forth general policy for protecting ground water. Provides for the development of Best Management Plans by rule. Unenforceable policy framework. Required to be developed, adopted by rule and enforceable when: 1) A verified detection of an agricultural chemical is at or above 50% of a standard. 2) Monitoring indicates an increasing trend of the chemical presence. 3) Monitoring indicates that a chemical has migrated. 4) EPA proposes to suspend or cancel a chemical registration or prohibit or restrict a chemical's sale or use unless the state has an approved management plan in place for that chemical (a Federal Pesticide Specific Management Plan [PSMP]), OR 5) An agricultural chemical that has the potential to leach is being used in a vulnerable area.	MDA Staff MDA staff, chemical standards set by DEQ.	plan completed in 1995 none yet, standards not set in rules.
Permits/Certifications/Bonds:	None authorized. However, following adoption of SMPs, certification, training and licensing could be required for specific uses in specific areas under MCA Sec. 80-15-214 2(e)		

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM (ACGWP)			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections: -Ground water Monitoring -Inspections	Required of MDA generally statewide to determine ambient situation and specifically where agricultural chemical contamination could be likely. Upon presentation of Department credentials at reasonable times or under emergency conditions may enter private or public property to sample, review records, investigate violations.	MDA staff. MDA\MSU Laboratory field staff	410 samples. 590 analyses. 86*
Administrative Compliance Notices/Orders: MCA 80-15-403 -Emergency Actions MCA 80-15-405	Can be issued for violating an established ground water standard, or any other requirement of the Act. Must be issued in coordination with DEQ acting under the Water Quality Act. Compliance Orders issued by MDA precludes taking other enforcement actions for the same violation under the Pesticides Act or the Fertilizer Act. Among other things, Compliance Orders can require monitoring and cleanup of soils and ground water. Without notice or hearing, to protect ground water from contamination or to prevent use of impaired or likely to be impaired ground water; orders may be issued or specific rules may be adopted.	Bureau Chief, Division Admin., Director Director	0 0
Admin. Penalties/Sanctions: MCA 80-15-412, maximum \$1000\offense except \$500 maximum for first offense by farm applicators under pesticide permit or for applying fertilizers.	For violations of law and rule. Violator must be given notice and be provided with an opportunity for a hearing under the provisions of the Montana Administrative Procedures Act (MAPA).	Bureau Chief, Div Admin.	0.00

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM (ACGWP)			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action: MCA 80-15-413. maximum \$10,000 per violation -Injunctions Authorized MCA 80-15-404.	Only for violations of MCA 80-15-402: violating provisions of SMPs, violating orders issued under ACGWP Act, and/or violations of ACGWP Act.	Director, District Court	0
	Permanent or temporary for violations subject to compliance orders issued under the ACGWP Act.	Director, District Court	0
Criminal Judicial Action: -Criminal Misdemeanor MCA 80-15-414 maximum \$1,500; minimum \$100 -MCA 80-15-414 A) \$5,000 and/or 6 months imprisonment. B) \$5,000 and/or 1 year imprisonment. Felony -MCA 80-15-414 maximum \$25,000 per day of violation and/or 1 year imprisonment. Subsequent violations at maximum of \$50,000 per day of violation and or 2 years imprisonment.	For violation of law or rules; also for obstruction of Department in performance of its duties under ACGWP Act.	Director, County Attorney	0
	A) For knowingly making false statements on required records or for tampering with required monitoring devices. B) For revealing confidential information required to be maintained under the law with an intent to defraud.	Director, District Court	0
	For intentional violations of above MCA 80-15-402. see "Civil Judicial Action."	Director, District Court	0

*Includes pesticide program inspections that incorporated ground water program components

8. History of Compliance. The Agricultural Chemical Ground Water Protection Act (ACGWPA) became effective January 1, 1991, so it is relatively new. Most compliance activities will be linked to the development and implementation of Specific Management Plans (SMPs). Since no SMPs are currently in effect, there are no significant compliance activities to report. To date, the agency has not taken any enforcement actions under the ACGWPA. The MDA has addressed pesticide spills that have or could have affected ground water through action taken under the Montana Pesticides Act. However in these actions, the MDA has informed the violator of possible violations under the ACGWPA.

The ACGWPA requires that the Department of Environmental Quality, Board of Environmental Review adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The MDA's development and enforcement of SMP's, issuance of orders, and other routine enforcement is contingent upon the DEQ Board's adoption of standards.

Currently, the MDA is investigating two fertilizer plants under the ACGWPA. In one case, ground water has been contaminated with nitrates/nitrites, and in the other case there appears to be a chance that ground water is or will be affected. These cases are being reviewed for appropriate action.

9. "Violations." As noted in the "tools" table, agricultural chemical users may be out of compliance if they violate the provisions set forth in a Specific Management Plan, if they violate the conditions of a Special Management Zone (SMZ), or if they contaminate ground water or create spills of chemicals which could likely contaminate ground water. Since the ACGWPA became effective, 4 administrative orders have been written requiring cleanup of pesticide spills, sampling of soils and ground water, and some soil removals. These orders were issued under the Montana Pesticides Act but made mention of possible violations of the ACGWPA. Significant violations of the ACGWPA are not formally defined in statute, rule or by a department policy strategy.

During the 1995 calendar year, the MDA issued no formal enforcement actions under the ACGWPA.

There are no pending or new violations of the ACGWPA.

Discovery of Violations. The agency anticipates that most violations of the ACGWPA will be discovered through routine inspections, tips and complaints, and Specific Management Plan reviews.

10. Considerations in Calculating Penalties. The ACGWPA Program uses a system to assess administrative civil penalties similar to that in the MDA's Pesticide Program. The Department has developed and adopted by rule a penalty matrix which specifies the range of penalty to be assessed for 1st, 2nd, and 3rd offenses of the ACGWPA law and rules. The statute specifies the maximum allowable penalties, and the matrix at ARM 4.11.914 sets forth the starting penalty amount. Like the Pesticides Act, the ACGWPA also requires the MDA to consider the gravity or seriousness of the violation, the degree of care taken by the offender, the degree of harm to humans, agriculture, or the environment, and the effect on a persons ability to stay in business prior to determining the amount of civil penalty to be assessed. Compliance history and frequency of violations are taken into consideration when selecting an appropriate enforcement action.

Beyond the above mentioned penalty matrix, the agency has not adopted any formal penalty calculation formula for determining penalties. Unlike the Pesticides Act, there is no statutory definition of what constitutes a major or serious violation in the ACGWPA. Criteria for assessing judicial civil or criminal

penalties is ad hoc. The program is also directed by statute to consider issuing warning letters or orders for minor violations if the public interest is better served than to report the violation for prosecution.

11. Resolution of Noncompliances. No enforcement actions have been issued under the Act to date. Ground water enforcement issues have been handled under the Montana Pesticides Act.

12. Current Compliance Priorities. The Department of Agriculture has identified the following compliance and enforcement priorities for the Agricultural Chemical Ground Water Protection Program.

Long-term:

- Monitor EPA's ground water regulations and prepare to initiate Specific Management Plans as needed following adoption of the federal regulations. Priority chemicals for SMPs will be determined by public input, chemical use patterns, volume of use, available alternatives and similar factors.
- Monitor ground water for pesticide residues; collecting samples from permanent monitoring wells and from other private or public wells. High priority sites for sampling are areas underlaid by vulnerable ground water (shallow, permeable soils) where agricultural chemicals are being used.
- Investigate agricultural chemical contamination and require remediation of sites with the potential for entering ground water. Sites for investigation and remediation will be prioritized by considering the type of chemical involved, level and extent of residues, ground water characteristics (depth, uses, quality), probability that ground water will become contaminated at levels approaching EPA's minimum concentration levels, and similar factors.
- Develop procedures and implement a program for routine inspections of the communities regulated under SMP's.

Short term:

- The adoption of standards for agricultural chemicals is necessary in the near future. Standards are the foundation upon which to base remediation orders and best management practices which are an integral part of SMP's.
- Public information and training about the ground water program, EPA's regulations, and specific management plan development.

13. Compliance Relationships with Other Agencies.

Oversight. Approximately 11%, or \$66,700, of each of the FY 96-97 biennium budget years for the ACGWPA Program comes from an EPA grant. The MDA has a yearly cooperative agreement with the EPA which includes some task elements specific to the ACGWPA Program. These include ground water monitoring of 8 permanent sampling wells, continued compliance assistance efforts, and development of Ground Water Management Plans. The MDA is subject to mid-year and year-end program reviews by the EPA. The Act specifically states that the rules adopted under the program can be no more stringent than federal rules or guidelines except under specifically allowed circumstances.

Partnerships. The MDA, ACGWP Program has several partnerships in effect with other Montana agencies. Most notable is the relationship with the Department of Environmental Quality (DEQ), Water Quality Division. Because of the ground water contamination prevention goals of the MDA program and the DEQ water quality programs, the ACGWPA and the legislation's Statement of Intent make it clear that the 2 agencies are to work together cooperatively at every convenience. The DEQ Board of

Environmental Review is defined in the ACGWPA and legislatively directed to adopt ground water standards for agricultural chemicals for use by both agencies. The DEQ, Board of Environmental Review is also authorized in the ACGWPA to adopt rules for administrative penalties, field sampling and laboratory quality assurance documents, and ground water sampling procedures. The MDA and DEQ are directed to cooperate on the classification of ground water, in issuing compliance orders, and taking other enforcement actions (administrative civil, and judicial civil and criminal penalties).

The MDA also works closely with the Montana State University Extension Service (MSUES) in its efforts to implement the ACGWPA Program. The law requires that MDA and MSUES cooperate in developing training and education tools for the program.

The MDA is directed to work with DEQ, the Bureau of Mines and Geology, and others to promote ground water research and data management efforts.

Delegated Authority. The Montana Department of Agriculture retains all authority to develop General Management Plans and Specific Management Plans for the use of agricultural chemicals in Montana. There is no statutory authority to delegate duties and responsibilities to local governments.